Supreme Court, U.S.
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No. 92-1118

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

FRANK J. CAMOSCIO, ET AL.

Petitioner,

v.

JOHN E. CONWAY, ET AL.

Respondents.

ON WRIT OF CERTIORARI TO THE

SUPREME COURT OF MASSACHUSETTS

* * * *

PETITION FOR WRIT OF CERTIORARI

* * * *

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THE QUESTIONS PRESENTED FOR REVIEW:

I. Did the court lack jusisdiction to hear this case because it was barred by the Doctrine of Claims Preclusion since the court had already decided on these issues in Camoscio v. Conway ?

II. Did the court err by not granting the Petitioner absolute immunity because the only statements complained about by the Respondents were court papers and affidavits filed in Camoscio v. Conway ?

III. Did the court err by failing to grant summary judgment in Camoscio's favor when Camoscio proved that the Respondents violated Massachusetts General Laws chapter 231 § 91 and Massachusetts General Laws chapter

268 § 1 ?

IV. Was Camoscio's right of Due Process violated by Judge Mather's prejudice because he was Preconceived as demonstrated by the following actions:

(1) On the first day of the trial he stated to Camoscio: "I heard about your antics. I don't like you. I don't trust you. You're a liar".

(2) He refused to step aside and declare a mistrial, thus violating Code of Ethics for Judges, Canon 3A, and

(3) He denied a motion for a Directed Verdict before hearing arguments ?

V. Was Camoscio's right of Due Process violated by Judge Mathers deny-

ing him

(1) The right to Present Favorable Arguments when he stopped Camoscio from talking about the past history of the title transfer and previous court actions proving that the property was taken fraudulently and Camoscio had acted in good faith to recover said property,

(2) Denying him the right to Present Witnesses and Face his Accuser when Judge Mathers denied him the right to Face Patricia Conway (His Accuser) and the Mendoncas to whom the Respondents allege that Camoscio had interfered with the sale of the property

who were subpoenaed, and

(3) Denying him the right to Present Favorable Evidence when Judge Mathers stopped him from placing into evidence Court Orders Barring the sale of the property and the Conways' tax returns which were subpoenaed proving that the Conways lied about their alleged losses, and also holding Camoscio in Contempt of Court for $100 for cross-examining the Respondents' witness on the alleged problem with the title which was a central issue in the case ?

VI. Was the Petitioner's Right of Redress Violated by Judge Mathers tampering with the transcript by deleting

such sections in which Judge Mathers stated: "I heard about your antics. I don't like you. I don't trust you. You're a liar". Proving that Judge Mathers was spoken to prior to the trial and was preconceived against Camoscio because Judge Mathers knew that the Appeals Court would grant Camoscio a new trial and the Judge could be sanctioned for these wrongful acts ?

VII. Can the verdict stand since this verdict is contrary to all state law and court decisions barring a party to collect damages if they fail to mitigate such damage ?

PARTIES TO THE CASE

FRANK J. CAMOSCIO,

Petitioner,

FRANCES M. HALL,

Co-Defendant in Original Case.

vs.

JOHN E. CONWAY,

Respondent,

and PATRICIA A. CONWAY,

Respondent.

TABLE OF CONTENTS

	Page
THE QUESTIONS PRESENTED FOR REVIEW	i-v
PARTIES TO THE CASE . .	vi
OPINION BELOW . . .	1-2A
JURISDICTION	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED . .	4
STATEMENT OF THE CASE . .	5-8
REASONS FOR GRANTING WRIT .	9-33
CONCLUSION	34-35

TABLE OF CONTENTS

Page

APPENDIX "A"

JUDGMENT ON JURY VERDICT . A1-A3

APPENDIX "B"

MEMORANDUM AND ORDER

UNDER RULE 1:28 . . . B1-B8

APPENDIX "C"

NOTICE OF DENIAL OF

F.A.R. APPLICATION . . C1-C2

APPENDIX "D"

ORDER OF NOTICE . . . D1-D2

APPENDIX "E"

MOTION TO SET ASIDE

APPEALS COURT'S JUDGMENT

WITH ATTACHMENTS . . E1-E80

TABLE OF CONTENTS

	Page
APPENDIX "F"	
MASSACHUSETTS GENERAL LAWS	
CHAPTER 231 § 91 . .	F1-F2
RULES OF EVIDENCE	
RULE 1004 . . .	F3
CODE OF JUDICIAL CONDUCT	
CANON 3(A)(1)(4) . .	F4-F5
MASSACHUSETTS GENERAL LAWS	
CHAPTER 268 § 1 . .	F6-F7
APPENDIX "G"	
SUMMONS AND RESTRAINING	
ORDER	G1-G4
PRELIMINARY INJUNCTION .	G5-G7

TABLE OF CONTENTS

Page

APPENDIX "H"

BILL OF SALE . . . H1-H3

APPENDIX "I"

MOTION TO DISMISS . . I1-I4

TABLE OF CASES

ABORN V. LIPSON (1970)

256 N.E. 2d 442, 357 Mass. 71 . 12

BRIAN ET AL. V. B. SOPKIN

& SONS, INC.,

49 N.E. 2d 863 33

BRUNNENKANT V. LAIRD,

360 F. Supp. 1330 . . . 17

TABLE OF CONTENTS

	Page
FRANK J. CAMOSCIO V. JOHN E. CONWAY, ...	5,10, 11,14
HEACOCK V. HEACOCK, 402 Mass. 21 (1988) . . .	9
JACKSON WATERWORKS, INC. V. PUBLIC UTILITIES COM'N OF STATE OF CAL., 793 F. 2d 1090, certiorari denied 107 S. Ct. 1334, 94 L. Ed. 2d 184	28,29
JEFFRIES V. GEORGIA RESIDENTIAL FINANCE AUTHORITY, 503 F. Supp. 610, adhered to 90 F.R.D. 62, affirmed 678 F. 2d	

TABLE OF CONTENTS

Page

919, certiorari denied 103
S. Ct. 302 28

MEZULLO V. MALETZ,
331 Mass. 233, 118 N.E. 2d 356 . 12

POLLGREEN V. MORRIS,
496 F. Supp. 1042 . . . 17,18

QUARANTO V. SILVERMAN,
345 Mass. 423, 428, 187 N.E.
2d 859, 863, (1963) . . . 33

SMITH V. SUBURBAN RESTAURANTS,
Inc., (1978)
373 N.E. 2d 215, 374 Mass. 528 . 12

TABLE OF CONTENTS

Page

TABLE OF CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

UNITED STATES CONSTITUTIONAL AMENDMENT XIV § 1 . . . 4,23

UNITED STATES CONSTITUTIONAL AMENDMENT 1 23

MASSACHUSETTS CONSTITUTION ARTICLE XII 23

28 U.S.C.A. § 1257 . . . 3

MASSACHUSETTS GENERAL LAWS CHAPTER 231 § 91 . . . 4,13, 15

TABLE OF CONTENTS

	Page
CANON 3A	23
RULES OF EVIDENCE, RULE 1004 (1)	31
SUPREME COURT RULE 13 . .	3

OPINION BELOW

This case was tried before a jury which found against the petitioner and co-defendant for $42,500.00 on January 25, 1991. See Appendix A, beginning on page A-1.

The petitioner filed an appeal which was denied on January 31, 1992. See Appendix B, beginning on page B-1.

The petitioner filed for further appellate review which was denied on February 26, 1992. See Appendix C, beginning on C-1.

The petitioner filed a motion with Judge Mathers of the Superior Court to set aside judgment due to the fraud in the case and the judges prejudice against the petitioner. Judge Mathers responded by striking all motions from the record and writing an order barring the petitioner

from filing any more motions in this case unless approved by him first. See Appendix D.

The petitioner then filed with the Appeals Court which reheard the case to set aside judgment and denied the motion on July 9, 1992. See Appendix E.

The petitioner tried to file a Writ of Certiorari in Washington because the Rules of the Supreme Judicial Court of Massachusetts do not apply to him. The court wrote an order in a past case baring the petitioner from filing with that court unless the justices vote to accept filing.

The Supreme Court of the United States returned the brief and appendix stating that the highest court of the State must rule first. On October 20, 1992 the high court of the State

of Massachusetts voted not to accept filing for a Petition of Equity which if granted would have set aside judgment.

JURISDICTION

The last judgment in the Court of Appeals in Massachusetts was entered on July 9, 1992. The jurisdiction of this court is invoked under 28 U.S.C.A. § 1257 and Rule 13 of this Court.

The Supreme Judicial Court of Massachusetts voted not to review the petitioners Petition for Equity on October 20, 1992.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment, Section 1 to the Constitution of the United States provides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws".

The petitioner also states that Massachusetts General Laws chapter 231 § 91 is the central issue in this case. This law is found in Appendix F, beginning on page F-1.

STATEMENT OF THE CASE

The Respondents John E. Conway and Patricia A. Conway filed suit against the Petitioners Frank J. Camoscio and Frances M. Hall in September of 1988 for damages arising out of Frank J. Camoscio v. John E. Conway. Camoscio responded by filing an answer and counterclaim to the complaint. Camoscio then took depositions on both Respondents in May of 1990.

The Respondents then filed an amended complaint with a motion for summary judgment. Camoscio responded by filing another counterclaim and a motion for summary judgment.

On June 18, 1990 Judge Prince heard the motions for summary judgment and stated that the trial would take place in August of 1990. The Petitioners appeared at the trial ready to

start but Judge Prince stated that he has not finished acting on the motions for summary judgment. He also stated that a trial may not be necessary be cause he may find in the Petitioners' favor.

The Petitioner Camoscio states that the docket sheet is not a true reflection of the motions filed with the court because in each case the Petitioners filed their motions complying with Rule 9(a). Because Walter Sullivan attorney for the Respondents failed to send the Petitioners copies of motions filed with the court, the Petitioners adopted a policy of sending a copy of every document sent to Attorney Sullivan to the court. If Sullivan responded or the time limit expired under Rule 9(a) then the Petitioner sent a copy of all documents in his possession to the court with a cover letter and

affidavit.

In December of 1990 Judge Prince came down with his written decision for summary judgment.

The Petitioner Camoscio was then contacted for a pre-trial conference on January 15, 1991. Appearing before Judge Steadman the matter was rung up for an immediate trial against the outrage of Camoscio because it gave him no time to subpoena witnesses to the trial. Judge Steadman was also informed that Petitioner Frances Hall was too ill to testify and the trial should be postponed for at least 30 to 60 days for the sake of justice. On January 18, 1991 the Petitioner Frances Hall had legal counsel Americo Ferullo file a motion to enlarge the time for a trial but Judge Mathers denied this motion.

During the trial which occurred

in January, 1991 the Petitioner was prohibited from asking questions on the same material which the Respondents were allowed to present in testimony. Judge Mather's prejudice against Camoscio during the trial will be discussed at great length in Reasons For Granting Writ.

The jury found against the Petitioners for $42,500.

The Petitioners filed a Notice of Appeal and ordered a copy of the transcript.

REASONS FOR GRANTING WRIT

A. DOCTRINE OF CLAIMS PRECLUSION BARS SUIT

The Respondents are barred from collecting any damages because of the doctrine of claims preclusion. Attached to their amended complaint is a copy of Judge Steadman's decision giving John Conway summary judgment because Camoscio should have raised this issue in the original court action. Judge Steadman cites Heacock v. Heacock, 402 Mass. 21 (1988), "[I]t applies only where both actions were based on the same claim. "Id. In the original action, Conway collected $500 damages. The court awarded him summary judgment. The only damages in question are those arising out of the original court action.

Camoscio raised this argument in his Motion for Reconsideration and Summary Judgment.

The Respondents in their amended complaint state in paragraph 9 that the Petitioners circulated false statements concerning the ownership of the property. In answers to interrogatories the Respondents admitted that the statements complained of are those filed in Camoscio v. Conway proving that this action is the same action, thus barred by the doctrine of claims preclusion.

B. THE PETITIONER IS ENTITLED TO ABSOLUTE IMMUNITY

According to the Respondent's interrogatories the only statements being complained about are those made by the Petitioners in the court case Frank J. Camoscio v. John E. Conway.

At the trial John Conway testified that the malicious statements referred to in his complaint are those filed in the court.
See Transcript, volume III, page 68 lines 8-14 and volume II, page 111 lines 1-7.
Since the statements complained of were made in Camoscio v. Conway, then these statements are privileged and the Petitioners are entitled to absolute immunity. The court in its wisdom adopted this policy in order to prevent people

from testifying with apprehension for fear of a law suit. The Petitioner Camoscio cites the following cases: Mezullo v. Maletz, 331 Mass. 233, 118 N.E. 2d 356, Aborn v. Lipson (1970) 256 N.E. 2d 442, 357 Mass. 71, "Words spoken by a witness in the course of judicial proceedings are absolutely privileged, if pertinent to the proceedings, even if uttered maliciously or in bad faith, and words 'pertinent to proceedings' are not to be construed narrowly", and Smith v. Suburban Restaurants, Inc. (1978) 373 N.E. 2d 215, 374 Mass. 528, "Absolute privilege of an attorney to publish false and defamatory matter in communications preliminary to a proposed judicial proceeding applies only where proceeding is contemplated in good faith and is under serious consideration".

C. THE COURT ERRED BY FAILING TO GRANT SUMMARY JUDGMENT IN THE PETITIONER'S FAVOR

The Petitioner filed for summary judgment under the original verified complaint and the amended verified complaint.

The Petitioner also filed a copy of his outline notes which proved that he made concise arguments citing Massachusetts General Laws chapter 231 § 91. The Petitioner stated that both Respondents who signed a verified complaint could not state what statements the Petitioner made that were false, malicious, and defamatory. Under this law the Respondents had a duty to inform the Petitioner of the exact statements complained about. Under the law, the Respondents were bound to inform the Petitioner fourteen days prior to the trial,

but, to date, the only statements the Respondents could make are that the entire Camoscio v. Conway contained these statements.

Judge Prince had a duty to find in the Petitioners favor because the Respondents could not cite one statement that was false, malicious or defamatory made knowingly by the Petitioners as stated in their amended verified complaint. Camoscio also proved to the court that John E. Conway committed perjury by making sworn statements concerning rent collected on the property. In his interrogatories dated February 5, 1990, he claimed that he had collected $10,400 in rent.
On February 7, 1990 Conway claimed in an affidavit he had collected $9,000 in rent.
During a deposition on June 6, 1990, he claimed he had collected $12,000 in

rent.

Judge Prince had a duty to find in the Petitioner's favor because there was no question that the Respondents failed to conform with Massachusetts General Laws chapter 231 § 91. There was also no question that perjury had been committed by John Conway in this case.

D. THE PETITIONER WAS DENIED DUE PROCESS BY JUDGE MATHERS FOR FAILING TO BE IMPARTIAL.

Judge Mathers was highly prejudice against the Petitioner Camoscio. During the course of the trial, he called Camoscio a liar at the side bar twice. The first occurrence does not appear in the transcript but did occur on January 22, 1991 when Judge Mathers told Camoscio that he's nothing but a liar and that he has heard about Camoscio's courtroom antics. On the second day of the trial, found in volume II page 90 of the Transcript, Judge Mathers says to Camoscio: "I believe you would [lie] and I don't believe you, and I don't trust you, you are a liar". Camoscio asked that Judge Mathers declare a mistrial because of his biasness against him. Judge Mathers never ac-

knowledged nor denied Camoscio's request for a mistrial because of the judge's attitude toward Camoscio calling him a liar at the side bar. See volume III page 110 lines 6-14 of the Transcript.

There is no question that Judge Mathers was prejudice against Camoscio, otherwise, he would not have called Camoscio a liar. Judge Mathers had a duty to recuse himself if he could not act impartially. The Canon of Ethics for judges instructs judges to recuse themselves if they cannot act impartially. The Petitioner cites the following cases: Brunnenkant v. Laird, 360 F. Supp. 1330, "Essence of a fair and impartial adjudication is not only a due process hearing but also a decision containing findings based on sufficient evidence. U.S.C.A. Const. Amend. 1", and Pollgreen v. Morris,

496 F. Supp. 1042, "Fundamental indispensable protections of procedural due process are notice and right to be heard by impartial decision maker, and both must be granted at meaningful time and in meaningful manner. U.S.C.A. Const. Amend. 5".

The judge's prejudice is clearly shown by the fact that he denied Camoscio's motion for a directed verdict before even hearing arguments. This act proved beyond any question that the judge violated his duty as outlined in Canon 3A.
See Transcript volume II, page 150 lines 17-21 and page 173 lines 8-25. This act alone proved that Judge Mathers was highly prejudice against Camoscio.

E. THE PETITIONER WAS DENIED THE RIGHT TO PRESENT FAVORABLE ARGUMENTS, WITNESSES AND EVIDENCE, THUS DENYING HIM DUE PROCESS.

Judge Steadman on January 15, 1991 wanted an immediate trial in this matter over the objections of Camoscio who asked the court for at least a thirty day extension of time to subpoena in witnesses. Judge Steadman set the trial date for January 22, 1991. Due to January 21 being Martin Luther King Day, this allowed Camoscio only three business days in which to subpoena witnesses. Judge Mathers during the trial would only allow Camoscio the right to enforce subpoenas that were served in hand with proof of service.

See Transcript volume II page 151 lines 22-25 and page 152 lines 1-7.

This part of the transcript shows that Camoscio was denied the right to be heard in a meaningful manner. Due process was violated because Camoscio could prove that his witnesses were served in hand, therefore, the judge should have enforced the subpoenas. Camoscio informed Judge Mathers that Mary Ann Mendonca was served in hand and if the judge wished to check he could call the deputy sheriff's office. Her testimony was vital to the case because it proved that Camoscio never interfered with the sale of the property to her from Conway. Since this was a central issue of this case for the jury to decide, then Petitioner Camoscio was never given a fair trial because he was denied the right to produce a witness who could prove that Camoscio never had interfered with the contractual agreement with the Mendoncas to buy the

property. See Judge Mather's instructions to the jury, page 104 volume III of the Transcript.

Judge Mathers also interfered with Camoscio's right to produce favorable evidence. Camoscio had subpoenaed in the Conways' tax returns proving or disproving claims made by Conway concerning repairs, interest paid, rents collected, and capital gains tax paid for sale of property. Judge Mathers refused Camoscio the right to examine these documents that were subpoenaed which would have proved that the Conways' claim to the court was false.

See page 148 volume II of Transcript. Judge Mathers placed into evidence John Conway's subpoena, exhibit 19, because Camoscio objected to the judge not allowing him to examine and place into evidence these tax returns which would have proved that Columbia Management

Company and not the Conways paid the mortgage on the property, thus raising the legal issue whether Columbia Management Company should have been the Respondent in this case.

The transcript does not accurately reflect the trial. John Conway when testifying was instructed by Judge Mathers to bring his tax returns back to court after the lunch hour. This part of the transcript is missing from volume II. The reason this section was removed was because it mitigated the judge's violation of Camoscio's right to produce favorable proofs that Conway lied concerning repairs and lost profit on the property. These tax returns proved that Conway made false claims to this court.

Patricia Conway was subpoenaed but failed to appear. She signed the verified complaint that Camoscio inten-

tionally spread false malicious statements, therefore, Camoscio wanted to face his accuser. Judge Mathers stated that her testimony was not necessary. In fact, Judge Mathers would not allow Camoscio the right to present his case until he discussed with the judge what every witness would testify on. The judge then would decide what witnesses would testify and what they would be allowed to testify on. Mr. Sullivan who represented the Respondent was not treated in this manner. See Transcript volume III, pages 1-34. This violated Article XII of the state constitution, First and Fourteenth Amendment of the United States Constitution, and Canon 3A.

Judge Mathers had no right to have Attorney Sullivan present when he forced Camoscio under the threat of not allowing him to present his case unless

the judge approved what each witness would testify about. Judge Mathers violated Camoscio's right to present his own favorable arguments and proofs. If Judge Mathers wants to fight Camoscio's case his way, then he should also pay for the loss.

Judge Mathers also stopped Camoscio from cross-examining witnesses concerning alleged bills for work claimed to have been done on the property. In fact, Judge Mathers threatened to hold Camoscio in contempt of court for questioning a witness on these alleged repairs for which he was being sued. See volume II page 88 lines 11-25 and page 90 lines 1-13 of Transcript. Because Camoscio continued to press on trying to discover the truth, Judge Mathers ccnstantly excluded many of Camoscio's questions which dealt with verifying and proving the alleged

losses claimed by the Conways. Judge Mathers finally held Camoscio in contempt of court because he asked John Conway about the title of the property. This was the central issue of the case for the jury to decide. See volume II page 123 lines 1-11 of Transcript. Mr. Sullivan, Conway's attorney, questioned his witness Gregory A. Brilhante on the clouded title of the property in question and was not held in contempt of court. See volume II page 9 lines 3-18 of Transcript. In fact, Sullivan even questioned John Conway about the problem with the property. See volume II page 106 lines 5-25 of Transcript.

Camoscio was denied the right to question the witnesses who were presented by the Respondents on the central issues of the case. These issues being: (1) Did Richard Hall have a right to sell the property to the Conways in the

first place ? (2) Did Richard Hall commit fraud in obtaining the title of the property which would legally nullify the sale ? (3) Did Richard Hall and William Flynn break court orders by selling the property ? (4) Did a probate court order exist conveying the property to Richard Hall ? and (5) Did Camoscio seek nothing more than the property he was cheated out of by Richard Hall, Carolyn St. Pierre, and William Flynn ? These were the real issues and arguments that Camoscio intended to present as his case. Judge Mathers denied him the right to question William Flynn on the breaking of restraining orders preventing the sale of the property. Judge Mathers also denied Camoscio the right to question Flynn on his participation in altering a purchase and sales agreement concerning Camoscio and Boston Municipal

Court. He denied Camoscio the right to put on the stand Postmaster Donald Clockadile of Pembroke which would have proven that Richard Hall stole Frances Hall's mail in order to receive favorable decisions in Probate Court. Private Detective Andrew J. Palermo was also scheduled to testify to show that Richard Hall was living with Carolyn St. Pierre who was the attorney who represented Frances Hall in divorce proceedings against her husband Richard.

Camoscio also subpoenaed in Judge Lawton to testify on his knowledge concerning the divorce in Probate Court and whether he was aware that William Flynn had committed fraud upon Probate Court concerning the selling of the property and distribution of assets.

Carolyn St. Pierre and Richard

Hall were served in order to explain their participation in a fraudulent scheme to cheat Camoscio. No money was ever returned by these two people, therefore, they were bound to appear in court and testify.

Camoscio cites the following cases: Jeffries v. Georgia Residential Finance Authority, 503 F. Supp. 610, adhered to 90 F.R.D. 62, affirmed 678 F. 2d 919, certiorari denied 103 S. Ct. 302, "In almost every setting where important decisions turn on questions of fact, due process requires opportunity to confront and cross-examine adverse witnesses. U.S.C.A. Const. Amend. 14". and Jackson Waterworks, Inc. v. Public Utilities Com'n of State of Cal., 793 F. 2d 1090, certiorari denied 107 S. Ct. 1334, 94 L. Ed. 2d 184, "Due process clause guarantees aggrieved party opportunity to present case and have its

merits fairly judged.

U.S.C.A. Const. Amend. 14".

F. THE PETITIONERS' RIGHT OF REDRESS WAS VIOLATED WHEN THE COURT FAILED TO GIVE HIM AN ACCURATE TRANSCRIPT.

Camoscio contends that the transcript was deliberately censored by Judge Mathers because he knew that the Appeals Court would grant Camoscio a new trial if the record reflected statements made by the judge on the first day when he stated: "I heard about your antics. I don't like you. I don't trust you. You're a liar". The fact that the judge made these statements and never had met Camoscio, he should have recused himself because he was preconceived. Camoscio requested an immediate mistrial and asked the judge to step down. Judge Mathers denied Camoscio's request. Camoscio then inquired if the side bar was recorded. Judge Mathers stated that these remarks

would appear on the record. They did not. See volume I of the Transcript. Camoscio mentioned this episode in volume III page 13 and was threatened with being locked up. This proves that the incident took place and that Judge Mathers has tampered with the evidence.

Camoscio filed a motion to either correct the transcript or obtain the stenographer's tapes to correct the record. This motion was denied.

Under the Rules of Evidence, Rule 1004 (1), the Court must find in Camoscio's favor.

G. THE PETITIONER STATES THAT THE VERDICT IS CONTRARY TO STATE COURT DECISIONS CONCERNING A PARTIES DUTY TO MITIGATE DAMAGES.

Camoscio states that the Respondents caused the alleged damage by refusing to loan the Mendoncas the money as previously promised. The Respondents in their complaint alleged that Camoscio's statement interfered with the sale of the property by causing the mortgage company to rescind its offer to loan the money. During the trial John Conway testified that he owned the mortgage company in question which rescinded the offer to loan the Mendoncas the money. As a matter of law a party has a duty to mitigate damages. This testimony can be found in volume II of the Transcript, pages 137-138. The Petitioner cites the

following cases: QUARANTO v. SILVERMAN, 345 Mass. 423, 428, 187 N.E. 2d 859, 863 (1963).

10. Damages 62(1)

"A party claiming injury by tort has a duty to use reasonable means to minimize his damages". And Brian et al. v. B. SOPKIN & SONS, Inc., 49 N.E. 2d 863.

7. Damages 62(1)

"A party injured by a tort has duty to use reasonable care to minimize damages".

In summary if Conway did not withdraw his offer to loan the Mendoncas the money as stated under oath then the Mendoncas would have bought the property. All damages were created solely by the Respondents.

CONCLUSION

Camoscio has demonstrated that the trial was a sham. Judge Mathers should have recused himself from the outset but instead conducted a trial in which he denied Camoscio to cross-examine witnesses on the same material that the Respondents had presented. He denied Camoscio the right to present favorable witnesses, proofs, and evidence. Because Camoscio did not obtain due process, he is entitled to a new trial to settle these issues.

Judge Mathers knew he violated Camoscio's constitutional rights when on the first day he made his outlandish statements. Judge Mathers compounded his error when he deleted this judicial blunder from the record. Under the Rules of Evidence, the Appeals Court must find in Camoscio's favor.

I hereby certify that all of the above statements are true and are made under the pains and penalties of perjury.

Respectfully submitted,

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DATED: November 25, 1992